

I.

SUMMARY OF REPLY COMMENTS

Many commenters, both wireline and wireless agree that the primary line proposals of the Joint Board are at odds with the universal service provisions of the Act and are administratively unworkable. FW&A agrees. Rather than adopting an unworkable patch such as the capped primary line proposals that have unforeseen consequences and that will likely lead to the demise of universal service in rural areas, the Commission should fix the source of the problem. It should adopt competitively and technologically neutral Eligible Telecommunications Carrier (ETC) requirements that comply with the Act's universal service provisions and that are implemented in rigorous and fact-intensive ETC designation proceedings. This process will control the growth of the universal service fund and will obviate the perceived need to control the growth of the fund by implementing an unworkable and unlawful primary line plan.

The tiered support plan proposed by the Rural Telecommunications Associations may be appropriate if the Commission(s) is unwilling to require that new ETC applicants demonstrate a cost-based need for support. ETC applicants should, however have access to this tiered support after they have demonstrated that they can meet the ETC designation criteria discussed in these Comments.

II.

THE PRIMARY LINE PROPOSALS ARE CONTRARY TO LAW, UNWORKABLE AND UNNECESSARY

A. The Primary Line And Capping Proposals Provide Insufficient Support To Maintain And Construct Rural Telecommunications Networks.

United States Cellular Corporation (USCC) points out that the primary line or connection approach: “is misguided in that neither incumbents nor competitors receive support for individual connections – they receive support for constructing networks.”¹ “Building a network is not accomplished by bringing service to individual customers, but instead by bringing service to entire areas. ‘The switches, trunks, and infrastructure necessary to complete the network must be constructed whether a single customer is served, multiple customers are served or customers receive multiple lines’”²

The primary line proposals are fundamentally flawed because the provision of support to only primary lines and capping the level of support will insure that no ETC (wireline or wireless) has sufficient support to maintain and construct rural networks. For rural Local Exchange Carriers (LECs), what the Joint Board describes as support, is in reality recovery of the high costs rural LECs incur to provide networks that serve all customers in the designated service area. These high rural LEC costs are the costs that can not be recovered via affordable customer rates. This legitimate and necessary LEC cost recovery was previously generated via access charges, but is now recovered from the Universal Service Fund. Without this cost recovery, the Act’s universal service provisions cannot be met in rural areas served by rural LECs.

¹ USCC Comments at page 43.

² Id., page 22.

B. The Primary Line And Capping Proposals Violate The Provisions Of The Act And Are Unlawful

Dobson Cellular Systems (Dobson) states that: "... the primary connection approach is contrary to the statute and universal service principles..."³ FW&A agrees with Dobson. The Joint Board's recommendations are not consistent with the Act's provisions for any ETC serving high-cost areas.

1. The Proposals Violate Section 254(b)(1) Of The Act

The restatement and lump sum proposals would substantially reduce the support cost recovery (revenues) of the rural LECs and impair their ability to maintain a quality network and their ability to maintain just, reasonable and affordable rate levels. The result of adoption of the primary line or capping proposals, as Dobson correctly states, is that: "...carriers already operating in rural markets are unlikely to invest further in their networks of expand the network, having no reasonable or acceptable expectation for a return on the investment made..."⁴ To compensate for lost support cost recovery revenues, the rural LECs would have no alternative but to cut expenses, threatening the maintenance of a quality network or to raise the rates for remaining customers who had designated the rural LEC as the primary line and for all secondary lines. Neither of these options comport with the requirements of Section 254(b)(1) the Act.

The funding cap proposed by the Joint Board, would make this situation worse and would accelerate the loss of high-cost support recovery by rural LECs. As additional ETCs are authorized by the Commission or State Commissions (Commission(s)) in rural areas, the effective per-primary-line cost recovery support for rural LECs would be further reduced,

³ Dobson at page 20.

⁴ Id., page 23.

causing additional pressure to reduce costs and reduce quality or to raise rates to unaffordable levels, again at odds with the requirements Section 254(b)(1) of the Act.⁵

2. The Proposals Violate Section 254(b)(2) Of The Act.

The Rural Telecommunications Associations are correct in their observation that: “Carriers will be far more reluctant to make capital investments if the support levels are neither predictable nor sufficient...This reduction in investment [as a result of providing support for only the primary line] would erect a barrier to the provision of access to advanced services...”⁶ The Joint Board’s proposals will insure that revenues will not be available to rural LECs to continue to upgrade their networks to provision advanced services (for instance, the fiber and electronics required for high-speed access to the Internet) because of the loss of cost support recovery revenues that will occur with the capped restatement and lump sum payment proposals. Consequently, while the capped restatement and lump sum payment proposals might provide access, the advanced services will not be provided by rural LECs for customers to access through the primary line if these proposals are adopted. These proposals are at odds with Section 254(b)(2) of the Act.

⁵ Dobson, while opposing the primary line proposals, argues on page iii of its Comments that an interim cap and allocation of support based on ETC market share is appropriate. Western makes a similar proposal on page 18 of its Comments. This suggestion, like the Joint Board’s proposed cap will provide insufficient support to all ETCs and is at odds with the universal service provisions of the Act.

Dobson also proposes a number of additional measures (appropriateness of LEC local rates, whether USF support and RUS loans are duplicative, examining LEC rates of return, and evaluation of average schedules) to limit the size of the fund. None of these proposals have merit. For instance, it is nonsense to assume that there is duplication of the USF and RUS. RUS is a loan and the loan rate is part of the basis of the LECs return requirement. The net return requirement is part of the basis for universal service cost based funding for the LECs. The lower rate provided for in the RUS program lowers the return requirement of rural LECs and as a consequence lowers its universal service support requirements. Similarly, LEC rates and costs, (including their rate of return) have been reviewed and are subject to continual review by the Commissions. These proposals by Dobson to evaluate LEC costs and rates are disingenuous in view of Dobson’s and other wireless carriers’ opposition to ETC evaluation of their rates and costs.

⁶ Rural Telecommunications Associations Comments at page 22, information in brackets added for clarity.

3. The Proposals Violate Section 254(b)(3) Of The Act.

USCC observes that: "...rural areas have long trailed cities in terms of economic development. Use of high-cost support to improve infrastructure has significant economic impact on small communities and is a key to closing that gap."⁷ However, because of the cost recovery support losses that will be faced by rural LECs if the capped restatement or lump sum payment proposals are adopted, the comparability of rates and services required by the Act, Section 254(b)(3), will be lost and rural economic development will be harmed. As rural LECs lose their cost recovery support revenues, quality services will deteriorate, rates will rise and advanced services will not be provided. As a consequence, rural customers will no longer have access to services and rates comparable to services and rates in urban areas, at odds with the provisions of the Act.

4. The Proposals Violate Section 254(b)(5) Of The Act.

As the Rural Telecommunications Associations explain on pages 18 and 19 of their Comments, the Joint Board capped restatement or lump sum payment proposals will not provide sufficient revenue to continue to recover the high costs of the rural LECs' networks. Because of the loss of cost recovery support or revenues that these proposals will cause, rural service quality will deteriorate, rates will increase for both primary and secondary lines and advanced services will not be provided. If the primary line and capping proposals are adopted, sufficient revenues will not be provided to advance and preserve universal service, at odds with the requirement of Section 254(b)(5) of the Act.

5. The Proposals Violate The Acts Public Interest Requirement For Rural LECs.

⁷ USCC Comments at page 48.

Underlying the Act's Section 214 and 254 provisions is the basic premise the universal service provided by rural LECs in rural high-cost areas is in the public interest. Based on this public interest standard, the Act established provisions to ensure that sufficient and predictable cost recovery support would be provided to rural LECs serving these high-cost areas to enable them to provide quality services at just, reasonable and affordable rates and to provide access to advanced services that are comparable to rates and services provided in urban areas. This basic public interest premise of the Act for rural LECs will be violated and rendered inoperative, to the detriment of rural customers, if the capped restatement or lump sum payment proposals of the Joint Board are adopted.

6. The Primary Line And Capping Proposals Must Be Rejected By The Commission.

Because they are at odds with the provisions of the Act, the primary line and capping proposals recommended by the Joint Board must be rejected by the Commission

The hold harmless proposal, if it contemplates continuation of the existing calculation of uncapped support cost recovery levels for all rural LEC lines, would not have the harmful effects of the capped restatement or lump sum payment proposals, and would therefore be in concert with the public interest principal underlying the universal service provisions of the Act.

C. The Primary Line Proposals Are Administratively Unworkable.

Both USCC⁸ and the Rural Telephone Associations⁹ articulate the inherent administrative unworkability of the primary line proposals. FW&A agrees. A very few of the unanswered questions that must be addressed are:

- What constitutes a household or account?

⁸ USCC Comment at page 44.

⁹ Rural Telecommunications Associations Comments at pages 26 to 29.

- How many primary lines are there in homes or multi-tenant dwellings where unrelated individuals have separate accounts?
- Are all of the separate lines on a CMRS bill for a single billing address primary lines or are they primary and secondary lines?

Even if these questions are addressed and rules established by the Commission to define primary lines, any definition will be subject to gaming and manipulation as the Rural Telecommunication Associations observes on page 27 of its Comments. For instance, a household with multiple lines would simply need to receive separate bills for each line and then the serving ETC could claim that each line was a primary line. As the Rural Telecommunications Associations correctly observe: "...any type of policing system would likely be costly and onerous...".¹⁰

Finally, customer selection of the primary line will (as observed by the Rural Telecommunications Associations on pages 27 and 28 of their Comments) cause carriers to expend time and money finding ways to induce customers to select their service as the primary line. This will mean that the Commission would, if it adopts the primary line mechanism, set up a system that promotes uneconomic expenditures of time and resources in an effort to gain support revenues. Resources that could have been spent maintaining and providing universal and advanced services will be wasted on an uneconomic and Commission induced war to get customers to designate a particular ETC's service as primary.

The primary line proposals should be rejected by the Commission because they are unworkable and will if adopted lead to gaming of the support system and uneconomic expenditure of ETC resources to induce customers to designate their lines as primary.

¹⁰ Id., page 27.

III.

THE PRIMARY LINE AND CAPPING PROPOSALS ARE UNNECESSARY IF APPROPRIATE ETC DESIGNATION REQUIREMENTS ARE ADOPTED

A. Standardized Minimum ETC Criteria That Are Evaluated In Fact Intensive And Rigorous ETC Designation Process Must Be Adopted.

FW&A agrees with the Rural Telecommunications Associations' Comments (pages 29 to 40) that minimum ETC criteria must be adopted by the Commission.¹¹ The criteria suggested by the Associations are that an ETC applicant must demonstrate:

1. That it has adequate financial resources in order to provide quality services throughout the designated service area.

As discussed in its Comments, FW&A believes that an ETC applicant should provide company construction and expense budget information for the proposed ETC service area and financial information to evaluate the financial health of the applicant carrier. Analyses of this data will give the Commission(s) an idea of the health of the carrier and its commitment to providing quality service to its customers.

Dobson's assertion that its license from the Commission is evidence of adequate financial resources is incorrect.¹² Additional assurances of adequate financial stability is required for a universal service provider that must provide service to all requesting customers. Similarly, Western Wireless Corporation's (Western's) assertion that the requirement is burdensome and unnecessary¹³ is incorrect. The information, as

¹¹ CTIA suggests on page 9 of its comments that only voluntary guidelines are required. FW&A disagrees. The confusion and disparate decisions between states can only be rectified if a set of minimum guidelines is adopted by the Commission.

¹² Dobson Comments at page 7 and 8.

¹³ Western Comments at page 2 of Exhibit C.

FW&A pointed out in its Comments is generally publicly available and is an essential protection for consumers.

2. Its commitment and ability to provide services throughout the designated service area to all customers who make a reasonable request for service; Its commitment to use the funding it receives only to support infrastructure within the designated service area; and That its designation will not result in cream-skimming by allowing the applicant to serve only the low-cost, high revenue customers in the designated service area.

Universal service support is intended to be used in high cost areas to provide quality service to all requesting customers with rates that are just, reasonable and affordable. Carriers receiving support **should not** be allowed to decide on their own which customers they will serve and which customers will not receive service. Dobson makes such a proposal in its Comments when it states that if: "...the ETC still cannot provide service, it must notify the requesting party...."¹⁴ Dobson is in reality saying that it will decide if it will provide service and let the customer and Commission know when it will not.¹⁵ This would defeat the purpose of universal service and, in effect, allow such a carrier to cream skim by serving only those customers who are low-cost within a designated area. FW&A proposed in its Comments, specific and

¹⁴ Dobson Comments at page 8.

¹⁵ Dobson at page 9 of its Comments also argues that "Wireless carriers should not be required to use resale to respond to a reasonable request for service."

This notion is diametrically opposed to the universal service provisions of the Act that require that all customers requesting service be served by an ETC either with its own facilities or through the resale of another carriers services. Dobson further states that there is no similar requirement imposed on ILECs and that therefore a resale requirement on wireless carriers would not be competitively neutral (Comments at page 9). Dobson is wrong. Rural LECs are the Carrier of Last Resort (COLR), and as such must provide service as required by the universal service provisions of the Act to all requesting customers.

enforceable requirements that would insure that this criterion is met by ETC applicants.

3. Its ability to remain functional in emergency situations.

As proposed in its Comments, FW&A believes that the Commission should establish, at a minimum, specific and enforceable guidelines to ensure that this criterion is met by applicant ETCs.

Western claims that this requirement is unnecessary because consumers can better determine the type of emergency functionality they need.¹⁶ Western's claim is misplaced. This requirement is necessary to insure that, as the Act requires, consumers are provided with quality service. Western also asserts that wireless carriers are better suited to address emergency situations, such as auto accidents.¹⁷ This is only true if the accident happens to occur in a location where the wireless carrier provides quality service – not by any measure, all of the locations in rural areas.

4. The Impact of its designation on the USF. The State Commission or FCC must consider the impact on the growth of the fund.

Western asserts that this requirement is unnecessary because it is unclear how such information should be used.¹⁸ RCA-ARC also asserts that: "The amount of Federal high cost support is not a proper consideration in ETC designation cases."¹⁹

¹⁶ Western Comments at page 3 of Exhibit C.

¹⁷ Id.

¹⁸ Id., page 4.

¹⁹ Rural Cellular Association and The Alliance of Rural CMRS Providers (RCA-ARC) Comments at page 18.

FW&A disagrees and supports this requirement because it allows the State Commission or the Commission to evaluate factually if the level of support requested is warranted in view of the applicant ETC's need for support, rates, commitment to provide service, quality of service, etc.

5. That it will abide by consumer protection requirements imposed by State Commissions or the Commission.

FW&A recommended specific reporting requirements for billing and quality of service in its Comments that the Commission(s) should, at a minimum, adopt.

Dobson claims, incorrectly, that consumer protection requirements are monopoly-era regulations that are unnecessary in the hyper-competitive wireless marketplace.²⁰ At odds with Dobson's comments, the "hyper-competitive" market makes it essential that the Commission(s) track consumer complaints for wireless ETCs to insure that they provide quality service to all requesting customers and have not cut costs for billing, infrastructure and service quality as a result of the "hyper-competition".

These minimum requirements, are appropriate if analyzed in a rigorous and fact intensive ETC designation process by the Commission(s), as suggested by FW&A in its Comments.

B. Additional Minimum ETC Criteria Are Required In Order To Insure A Rigorous and Fact Intensive ETC Designation Analysis And To Insure That The ETC Designation Is In The Public Interest.

²⁰Dobson Comments at page 11.

As discussed by FW&A in its Comments, the following ETC criteria are necessary, in addition to those proposed by the Joint Board and the Rural Telecommunications Associations:

1. Applicant claims that there will be increased competition and that the advantages of the ETC designation outweigh the disadvantages must be verified.

ETC applicants generally provide absolutely no specific ways or examples nor any objective and verifiable documentation that show how their designation as ETCs would benefit consumers and the public interest. A rigorous and fact-based analysis must show that (a) The applicants services are offered at prices that are just, reasonable and affordable if a sufficient number of local minutes to meet typical usage patterns are included, (b) That customers will in reality pay lower charges to the CMRS provider for the local expanded local calling area, as CMRS providers claim, and (c) That mobility is in reality a benefit based on the area in which the applicant provides service. A factual demonstration is essential because the purported public interest benefits of competition (provision of advanced services, higher quality services, customer choice, new technologies, etc.) typically cited by ETC applicants in support of their designation are likely already available in the rural LEC service areas without imposing additional support demands on ratepayers²¹. As a consequence, if ETC designation is granted based on the vague and unsupported claims of the applicants, and without factual verification, unneeded universal service support will be provided, harming ratepayers who must pay for the support and the universal service funding process which is already under pressure. Further, a factual analysis of the advantages of CMRS service offerings (mobility, expanded calling)

²¹ FW&A's rural LEC clients have an average of three wireless service providers already offering competitive wireless service within the LECs exchange areas.

would factually evaluate if the alleged advantages are outweighed by the disadvantages of unaffordably priced services with insufficient levels of included local usage. The Commission(s) must determine if it is in the public interest to provide support for universal service rates as high as \$299.00 per month or for universal service packages with minimal local usage which effectively causes local customers to pay excessive per minute charges above the minimum block of time.

2. The Applicant Must Be Required To Provide Equal Access.

Rural, high-cost and insular customers will benefit from the imposition of an equal access obligation on wireless ETCs through access to lower rates for long distance services. Unless equal access is a requirement for all ETCs, wireless ETCs will charge unreasonable originating and terminating rates (for example, 39 to 45 cents per-minute for additional minutes and long distance charges of 20 to 30 cents per-minute), extracting monopoly profits from their captive long distance customers, in violation of Section 254(b).²²

Western, CTIA and AT&T Wireless are wrong in their assertion that Section 332(c)(8) of the Act prohibits the imposition of this requirement.²³ FW&A's Comments clearly demonstrate that this competitively neutral requirement, which benefits consumers, can legally be applied by the Commission(s).

3. A Specified Amount Of Local Usage Must Be Provided.

The Rural Telecommunications Associations assert that the Commission should not impose a local usage requirement on ETCs. Their Comments argued that: "Most

²² Dobson claims at page ii of its Comments that equal access is an "...anachronism in the face of today's competitive marketplace." This is a strange comment by Dobson in view of the fact that equal access guarantees customers with a competitive choice of toll providers, as opposed to the current monopoly provision of toll services by wireless carriers.

²³ Western Comments at page 3 of Exhibit C; CTIA Comments at page 11; AT&T Wireless Comments at page 4 and 5.

wireless carriers...are offering bundled calling plans with flat monthly fees that do not distinguish between local and toll/long distance calls. These plans inherently have a local usage component that allows consumers to use a significant amount of minutes on local and/or long distance calls....the FCC and State Commissions should presume that there is a local usage component in these plans that meet the requirement in the definition of universal service....”²⁴ In a similar vein, Dobson claims that the concept of local usage is dying and that there is no evidence that wireless ETCs are supporting plans with insufficient local usage.²⁵ USCC asserts that states have no authority to impose usage requirements and that in any case this requirement is unnecessary because customers now enjoy a wide selection of calling plans.²⁶

FW&A disagrees with these assertions. At odds with the Associations, Dobson’s and USCC’s comments, the lowest priced wireless ETC plans generally offer local calling plans within the MTA (the wireless local calling area) with a per-minute charge for long distance calling beyond the MTA. Apparently, the concept of local usage is not dying with wireless carriers, and in any case, local usage is required by the Commission’s universal service rules. Applicant ETC rate plans that offer a minimal number of anytime minutes will, based on rural LEC average customer usage, cause customers to incur significant and potentially unaffordable per-minute charges in addition to the block of time rate.²⁷ This will force many customers to purchase more

²⁴ Rural Telecommunications Associations Comments at pages 40 and 41.

²⁵ Dobson Comments at pages 12 and 13.

²⁶ USCC Comments at pages 36 and 37. RCA-ARC makes the same argument on page 16 of its Comments.

²⁷ At odds with Dobson’s assertion that there is no evidence that wireless ETCs offer insufficient local usage, Attachment 4 to FW&A’s Comments shows rate plans proposed for support by Alltel and RCC in Kansas. This Attachment shows that Alltel’s rates range from \$29.95 for only 300 anytime minutes to a

costly rate plans, at odds with the goals of universal service. The Commission and State Commissions should factually evaluate the level of usage that ETCs should provide to customers as part of each of the applicant ETC's supported universal service offerings. In addition, since the vast majority of wireless carriers still bill on a total MOU basis, meaning their plans are based on an originating plus terminating MOU basis, the Commission and State Commissions should specify a minimum volume of originating MOUs that are required to be included with an ETC's calling plans. The fact that wireless applicant ETCs have larger calling scopes and a variety of calling plans is only a benefit to consumers in terms of universal service offerings if the Commission and State Commissions ensure that consumers have sufficient local usage so that they do not trade per-minute toll charges for unreasonably high charges above a block of time rate.

Finally, wireless carriers that offer bundled local and long distance minutes can, at odds with the Associations' Comments, distinguish between intraMTA (local) and interMTA (long distance) minutes. The Associations are essentially arguing that

high of \$299.95 for 3000 anytime minutes per month, and RCC's rates range from a low of \$29.99 for only 300 anytime minutes to a high of \$149.99 for 1000 any time minutes per month. If evaluated factually, most, if not all, of these rate plans are not reasonably priced and affordable universal service offerings as required by the Act or, if reasonably priced, do not offer a sufficient amount of local usage. Even though CMRS providers have larger calling scopes within which there are no toll charges, this is a distinction without meaning because the CMRS provider's customers will very likely incur significant charges for usage above the block of time. For example, Alltel's lowest priced plan is \$29.95 per month for 300 anytime minutes. However, rural LEC customer's use, on the average, more than 1000 minutes per month.²⁷ If only 500 of the 1000 minutes are anytime (non-night and non-weekend minutes) then **the real price a customer in the rural LEC's area pays** for this Alltel calling plan **is \$29.95 plus 45 cents per minute** (the charge for minutes above the block) times 200 minutes (minutes above the 300 minute block) **or \$119.95** (\$29.95 plus \$90.00). Of course, to avoid these per minute charges above the \$29.95 plan, the customer could buy a more expensive, and less affordable calling plan with more block of time minutes, even though the rates for the plans may not be just, reasonable and affordable. Customers may pay the less affordable and higher rates for these wireless services because of mobility, however mobility is not a universal service for which funding is received and does not justify receipt of unneeded support for unaffordable rate levels. Providing support for mobility, a competitive service, is at odds with the requirements of Section 254(k) of the Act.

universal service support should be provided for toll calling, at odds with Section 254(k) of the Act and the Commission's universal service definition that does not provide for such support. FW&A does agree with the Associations that a minimum local usage requirement should not preclude ETC carriers from offering bundled plans. However, the notion that a minimum local usage requirement cannot be applied because local and long distance minutes are bundled is incorrect.

4. The Commission(s) Should Evaluate Whether Additional ETCs (primarily wireless carriers) Have A Cost-Based Need For Support.

The Commission should evaluate whether additional ETCs (primarily wireless carriers) have a cost-based need for support. It may be that wireless carriers serving rural areas may have high costs but currently the evidence suggests otherwise (see Attachment 3 to FW&A's Comments). However, the answer to this question is unknown for specific rural wireless ETC areas because the current irrational ETC designation process provides support to additional ETCs without any needs test. In no other endeavor would rational people provide millions of dollars to private companies without a modicum of evidence that the revenues were required. This largess has brought on the current federal support funding crises and is based on flawed federal policies that must be changed if sustainable levels of support are to be provided to offer and maintain universally available service in rural telecommunications markets as the Act requires. Wireless and wireline technologies are fundamentally different technologies with differing cost structures. It is wrong to believe that competitive neutrality requires exactly the same amount of support to be provided to these differing technologies. In fact, common sense and competitive

neutrality would dictate that each technology would receive support based on its costs to provide high quality service to all customers in rural service areas.²⁸

The Rural Telecommunications Associations argue for a plan that includes tiered support ratios and optional cost studies for additional wireless ETCs.²⁹ This proposal is cost-related because it assumes that wireless carriers that serve primarily rural areas do have higher per-line costs than do wireless carriers serving both rural and urban areas. If the Commission(s) are unwilling to recognize that rural areas will not support multiple ETCs and/or are unwilling to require additional ETCs to demonstrate a cost-based need for support, the Associations plan may have merit and should be further evaluated by the Commission. In that evaluation, the Commission should test the assumption that wireless carriers serving rural areas have higher costs than those serving both rural and urban areas, and more importantly should evaluate if those costs when compared with revenues generated demonstrate a need for support. The current evidence provided by FW&A in its Comments (Attachment 3) suggests that the revenues generated by rural wireless carriers cover the costs of those carriers and that universal service support is not required.

5. Minute Of Use Blocking Is Necessary For All Per-Minute Charges, Not Just For Toll Charges.

²⁸ USCC states on page 31 of its Comments that “Some have argued that the way to fix the system is to pay each carrier based on its own costs. Such a system would insulate incumbents from competition and lessen for each carrier the incentive to innovate or make efficient network investments. Each carrier would have the reverse incentive – to construct networks to get support...” RCA-ARC makes similar comments on page 11 of its Comments. This comment shows USCC’s and RCA-ARC’s complete lack of understanding of universal service and the universal service support system. Universal service support is intended to fund high rural costs to provide quality universal service for all consumers that cannot be recovered in just reasonable and affordable rate levels. The support does provide a positive incentive to construct networks and to provide innovations for consumers. Support was not intended to be provided to wireless carriers that will not provide service to all rural customers requesting service and where high wireless rate levels generate revenues that cover the rural wireless costs.

²⁹ Rural Telecommunications Associations Comments at pages 5 to 16.

The Commission should require per-minute blocking and not just toll blocking. If the Commission does not take this action, low-income customers may have their toll blocked, but still end up with large and unaffordable bills because of originating local and terminating per-minute charges in excess of the block of time purchased by the customer.

6. Customer Service Agreements Requiring Payment of Termination Penalties Should Not Be Allowed For Universal Service Offerings.

The Commission should consider whether a contractual service requirement for local service with a termination penalty is in the public interest and whether it is appropriate to support such an anti-competitive condition of service with universal service funding.

USCC claims that it should not be held to service quality standards because competitive ETCs are already held to higher competitive standards: “if service quality is poor, customers can and do switch carriers.”³⁰ This statement is misleading because most wireless customers have signed termination agreements. They can switch carriers if dissatisfied with a wireless carrier’s service, but only if they are willing to pay substantial termination penalties.

C. Summary of Proposed Minimum ETC Criteria.

The following minimum ETC criteria or requirements are necessary to implement the Act’s universal service requirements and will ensure a rigorous and fact intensive ETC designation process. The Commissions must insure that an applicant ETC:

³⁰ USCC Comments at page 34. RCA-ARC makes the same claim on pages 13 and 14 of its Comments.

- Has adequate financial resources to provide quality services throughout the service area.
- Is committed to, and will use its support to provide service to all requesting customers in the designated service area for which it is receiving support funds and assume the COLR obligation if the incumbent relinquishes this obligation.
- Will remain functional in emergency situations.
- Will abide by consumer protection requirements specified by the Commission(s).
- Provides services for which the benefits of providing supported services outweigh the disadvantages of supporting the services – services must be provided at just, reasonable and affordable rate levels.
- Demonstrates that its ETC designation will not have a detrimental impact on the Universal Service Fund.
- Will provide equal access for its customers.
- Provides a specified minimum amount of local usage comparable to the average local usage utilized by customers in the area.
- Has a cost-based need for support.
- Provides minute-of-use blocking for low income customers.
- Does not require a termination contract for its universal service offerings.

USCC observes that: “Competitive neutrality, a core principal for implementing universal service rules, requires that all universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.”³¹ FW&A agrees and believes that it is time

³¹ USCC Comments at page 33. RCA-ARC makes similar statements on page 13 of its Comments.

that the Commissions adopt ETC designation criteria that do not favor wireless carriers and their technology. USCC argues that if wireless carriers are subjected to ETC designation criteria, that rural LECs should also be subjected to those criteria.³² The fact is that rural rate-of-return LECs are generally subjected to the ETC criteria discussed in these Comments, while wireless ETCs are not, at odds with competitive neutrality.

The Joint Board's concern that led to the ill-conceived and unworkable primary line proposals, is the growth in the support funds and expected accelerated growth due to the designation of competitive ETCs (primarily wireless ETCs). Rather than adopt an unworkable patch such as the capped primary line proposals, that has unforeseen consequences and that will likely lead to the demise of universal service in rural areas, the Commission should fix the source of the problem by adopting rigorous ETC designation criteria (such as those proposed in FW&A's Comments and Reply Comments) that are competitively and technologically neutral.

RCA-ARC asserts that the requirements imposed on rural LECs are necessary: "...because consumers must be protected from monopoly business practices."³³ Assuming there is any validity to the RCA-ARC comment, the ETC designation criteria discussed by FW&A in its Comments are, in a like manner, necessary to protect consumers from competitive abuses by wireless providers.

IV.

ASSERTIONS MADE BY A NUMBER OF COMMENTERS ARE INCORRECT

³² "...unless service quality standards are imposed on ILECs *as a condition of their ETC designation*, it is not competitively neutral to impose...service quality standards on other classes of carriers..." USCC Comments at page 33; "No financial qualification criteria were placed on incumbents." USCC Comments at page 34. RCA-ARC makes similar statements on page 14 of its Comments.

³³ RCA-ARC Comments at page 15.

1. Universal Service Support Is Not Intended By The Act To Be Used To Artificially Insert Competition Into Rural Areas.

A number of the wireless commenters assert that the purpose of universal service support is to bring competition to rural areas. For instance, Dobson asserts that: “The relevant statutory framework favors competition, and thus the universal service rules should maximize consumers’ access to competitive markets and the benefits they bring.”³⁴ Similar arguments are made by USCC: “...the Commission must continue to deliver sufficient high-cost support to provide customers with choices in service providers...”³⁵ and the: “...purpose of the Act was to drive competition...”³⁶ RCA-ARC asserts Commission should implement policies: “...that foster competition...” and that “The purpose of the Act was to drive competition for both customers and support...”³⁷ Alltel on page 3 of its Comments also observes, wrongly, that the Act specifically contemplates competition among carriers receiving universal service support in rural areas, including those served by rural LECs.

These assertions are incorrect. The universal service statutory requirements call for quality services at just, reasonable and affordable rates with access to services, including advanced services, and prices that are comparable in urban and rural areas. Further, before an additional ETC may be designated in the service area of a rural LEC, such a designation must be shown, based on facts and intensive analysis, to be in the public interest. These statutory requirements, as the Commission has recognized in the Virginia Cellular Order, stand apart from the alleged, and unproven, benefits that competition may bring to rural areas.

³⁴ Dobson Comments at page ii.

³⁵ USCC Comments at page 29.

³⁶ Id., page 32.

³⁷ RCA-ARC Comments at pages iii and 11.

2. ETC Designation Requirements Are Not A Barrier To Entry And Do Not Restrict Competitive Entry.

Dobson states that the public interest standard should not be used to raise “...unnecessary barriers to CETC entry.”³⁸ Using a similar assertion, USCC states that funding should not be used to restrict competitive entry.³⁹ Finally, RCA-ARC urges the Commission not to adopt ETC requirements that would chill competitive entry.⁴⁰

The ETC requirements that are proposed in these Comments are not a barrier to entry and do not restrict competitive entry, but are a competitive and technologically neutral means to implement the Act’s universal service and rural public interest requirements. Many wireless carriers now operate in rural LEC areas, including Dobson and USCC, and have apparently not found the lack of support to be a barrier to entry. USCC states that: “If any entrepreneur could make a business out of competing with subsidized ILECs in rural areas without high-cost support, surely it would have happened by now...”⁴¹ Apparently this is simply rhetoric by USCC because USCC now operates in those rural areas without support.

If a wireless carrier, however, seeks ETC designation and support, it is held to a higher standard by the universal service provisions of the Act and it must be required to demonstrate that it will meet the Act’s requirements for universal service and in fact, needs the support it seeks. There is no guarantee or preference in the Act for competition among universal service providers in rural LEC areas. Instead, an

³⁸ Dobson Comments at page ii.

³⁹ USCC Comments at page iv.

⁴⁰ RCA-ARC Comments at page iv.

⁴¹ USCC Comments at page 24.

applicant ETC must meet the Act's universal service requirements, including the public interest requirement before it may be designated as an ETC.

3. The Commissions Have The Authority Under The Act To Impose Additional ETC Designation Requirements In Rural LEC Service Areas.

USCC asserts wrongly in pages 2 to 23 of its Comments that the Commissions do not have the authority to impose additional ETC requirements to insure that the Act's universal service and public interest requirements are met in rural LEC areas.⁴²

Incredibly, USCC also argues that once granted, an ETC designation may not be revoked if the ETC fails to fulfill the Act's universal service requirements.

USCC's analysis is wrong. The Act clearly gives the Joint Board and thus the Commission and the State Commissions authority to enact and modify ETC criteria for rural LEC service areas. The Commission(s) also clearly have the authority to rescind an ETC designation if the ETC is not fulfilling the Act's universal service requirements.

4. Multiple ETC Designations In Rural LEC Areas Are Unsustainable And Must Be Limited.

CTIA asserts on pages 12 and 13 of its Comments that there should be no limits on the number of competitive ETCs in rural LEC areas. RCA-ARC makes similar claims on pages 19 and 20 of its Comments. FW&A disagrees.

In the short term, the Commission's ETC designation policy does provide consumers with a choice of providers, services and rates. However, it is clear that in the longer term, rural markets cannot economically support multiple ETCs and the resulting choice of providers for consumers, without continued infusions of universal service support causing continued growth of the Universal Service Fund. As one would

⁴² RCA-ARC makes similar claims on pages 30 to 50 of its Comments.

expect, because support is available, more and more carriers are seeking ETC designation for the same low density rural market areas, even though this is clearly an uneconomic entry decision. Belatedly, the Commission and Joint Board have recognized that one of the effects of this policy of providing support to all rural ETC applicants is that the Universal Service Fund is growing at a rate that some consider could lead to unsustainable levels.

RCA-ARC asserts that: “We can find nowhere in the 1996 Act or its legislative history any expressions that the new law was intended to support a single network...”⁴³ RCA-ARC need look no farther than the rural LEC public interest requirement in Section 214(e)(2) of the Act. That Section clearly contemplated that there may be a single universal service provider in the area served by a rural LEC unless the public interest dictated otherwise.

A rational ETC designation process (as opposed to the current process) that would benefit consumers and provide sufficient funding to ETCs serving rural markets would be to designate only one wireline ETC (the current rural LEC) and one wireless ETC in each rural service area. The State Commission could determine which wireless ETC is best suited to be an ETC based on the criteria described in these Comments. If more than one wireless ETC has already been designated in rural service areas, the State Commission could review the qualifications of each of the wireless ETCs and select the most qualified. In order to prevent harm to the wireless ETCs not selected, their support could be phased out over a 2 to 3 year period.

⁴³ RCA-ARC Comments at page 12.

Respectfully submitted by,

Paul L. Cooper
Director of Operations, Fred Williamson & Associates, Inc
2921 East 91st Street, Suite 200
Tulsa, OK. 74137-3355
Telephone: (918) 298-1618